

ESTTA Tracking number: **ESTTA588941**Filing date: **02/24/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	John Wayne Enterprises, LLC		
Entity	limited liability company	Citizenship	California
Address	210 62nd Street Newport Beach, CA 92663 UNITED STATES		

Attorney information	Lindsay J. Hulley Rutan & Tucker, LLP 611 Anton Boulevard 14th Floor Costa Mesa, CA 92626 UNITED STATES lhulley@rutan.com, trademarks@rutan.com Phone:714-641-5100
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**Registration Subject to Cancellation**

Registration No	3539584	Registration date	12/02/2008
Registrants	Mandarino, Maria 100 E. Lake Shore Drive Round Lake Park, IL 60073 USX  Mandarino, Eugene 100 E. Lake Shore Drive Round Lake Park, IL 60073 USX		

**Goods/Services Subject to Cancellation**

Class 043. First Use: 1993/09/15 First Use In Commerce: 1993/09/15

All goods and services in the class are cancelled, namely: Cafe-restaurants; Carry-out restaurants; Provision of food and drink in restaurants; Restaurant and bar services; Restaurant services; Restaurant services featuring sandwiches; Restaurants; Restaurants featuring home delivery; Take-out restaurant services; Catering; Catering for the provision of food and beverages; Catering of food and drinks; Providing banquet and social function facilities for special occasions; Cafes

**Grounds for Cancellation**

Abandonment	Trademark Act section 14
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Attachments	WILD GOOSE CAFE Petition for Cancellation.pdf(123401 bytes )
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**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lindsay J. Hulley/
Name	Lindsay J. Hulley
Date	02/24/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JOHN WAYNE ENTERPRISES, LLC,

Petitioner,

v.

EUGENE AND MARIA MANDARINO,

Respondents.

Cancellation No.: TO BE ASSIGNED

Registration No.: 3,539,584

For the trademark: WILD GOOSE CAFE &  
design

**PETITION FOR CANCELLATION**

John Wayne Enterprises, LLC, a California limited liability company having a place of business at 210 62<sup>nd</sup> Street, Newport Beach, California 92663 (“Petitioner”), for its Petition for Cancellation, believes that it is and will be damaged by the continued registration of the mark WILD GOOSE CAFE, as shown in U.S. Registration No. 3,539,584 (the “Registration”), owned by Eugene and Maria Mandarino (collectively “Respondents”), and hereby petitions to cancel the same pursuant to Section 24 of the Trademark Act, 15 U.S.C. §1064.

As grounds for the Petition for Cancellation, Petitioner alleges as follows:

1. Petitioner is the owner of a trademark application for WILD GOOSE in Class 43 for “Delicatessen services; Fast-food restaurant services; Food preparation services; Mobile cafe services for providing food and drink; Mobile restaurant services; Preparation of food and beverages; Providing of food and drink via a mobile truck; Restaurant and cafe services; Restaurant and catering services; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Restaurants featuring home delivery; Salad bars; Self-service restaurants;

Take-out restaurant services” in the United States Patent and Trademark Office (the “USPTO”), Application Serial No. 85/755,763 (“Petitioner’s Mark”).

2. The application for Petitioner’s Mark is valid and subsisting, and is owned by Petitioner together with the business and goodwill connected therewith.

3. On January 27, 2013 and August 23, 2013, the USPTO refused registration of Petitioner’s Mark, citing a likelihood of confusion with the Registration.

### **The Registration**

4. On information and belief, on December 2, 2008, Respondents obtained a registration for the mark WILD GOOSE CAFE & design (“Respondent’s Mark”), Registration No. 3,539,584, covering “Cafe-restaurants; Carry-out restaurants; Provision of food and drink in restaurants; Restaurant and bar services; Restaurant services; Restaurant services featuring sandwiches; Restaurants; Restaurants featuring home delivery; Take-out restaurant services; Catering; Catering for the provision of food and beverages; Catering of food and drinks; Providing banquet and social function facilities for special occasions; Cafes” in International Class 43 with an asserted date of first use of September 15, 1993.

5. On information and belief, Respondents abandoned use of Respondent’s Mark in or around 2007 and have not resumed use of Respondent’s Mark.

### **CLAIM FOR RELIEF**

#### **Abandonment**

#### **Section 14 of The Lanham Act; 15 U.S.C. §1064(3)**

6. Petitioner hereby incorporates the foregoing paragraphs as fully set forth herein.

7. Section 14 of the Lanham Act, 15 U.S.C. §1064(3), provides that a petition to cancel a registration of a mark may be made at any time if the registered mark has been abandoned.

8. Upon information and belief, Registrants abandoned Respondent's Mark in or around 2007 and have never resumed use of Respondent's Mark.

9. The Trademark Trial and Appeal Board has authority under 15 U.S.C. § 1068 to cancel the Registration.

WHEREFORE, Petitioner prays that Registration No. 3,539,584, be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

Please recognize Lindsay J. Hulley and the law firm of Rutan & Tucker, LLP, as attorneys for Petitioner in this proceeding and address all communications to Ms. Hulley at the address below.

This Petition for Cancellation is being submitted electronically through ESTTA. The required fee is authorized to be charged against the Deposit Account of the Attorney for Petitioner.

Respectfully submitted,

Dated: February 24, 2014

By: /Lindsay J. Hulley/  
Lindsay J. Hulley  
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611 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626  
Telephone: (714) 641-5100  
lhulley@rutan.com  
Attorneys for Petitioner,  
John Wayne Enterprises, LLC

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is one of the attorneys for Petitioner John Wayne Enterprises, LLC, in the above-captioned Cancellation proceeding and that on the date which appears below, she caused a copy of the foregoing **PETITION FOR CANCELLATION** to be served on the following with the United States Postal Service with fully pre-paid postage by first class mail service:

**Respondents:**

Eugene and Maria Mandarino  
100 East Lake Shore Drive  
Round Lake Park, Illinois 60073

**Respondents' Counsel of Record:**

Joseph T. Jasper  
Hanley Flight & Zimmerman, LLC  
150 South Wacker Drive, Suite 2100  
Chicago, Illinois 60606-4202

Dated: February 24, 2014  
Costa Mesa, California

/Lindsay J. Hulley/  
Lindsay J. Hulley